

AMENDED IN ASSEMBLY JUNE 14, 2016

AMENDED IN SENATE MAY 10, 2016

AMENDED IN SENATE APRIL 14, 2016

AMENDED IN SENATE APRIL 4, 2016

**SENATE BILL**

**No. 1078**

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**Introduced by Senator Jackson**

February 17, 2016

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An act to amend Sections 1281.85 and 1281.9 of, and to add Section 1281.65 to, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

SB 1078, as amended, Jackson. Civil procedure: arbitration.

Existing law governs arbitration in civil proceedings. Under existing law, a neutral arbitrator is defined as one who is selected jointly by the parties or by the parties' arbitrators, or is appointed by the court if the parties or their arbitrators cannot jointly select an arbitrator. Existing law requires a person selected to serve as a neutral arbitrator to disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt as to the proposed neutral arbitrator's impartiality. Existing law requires the disclosure to include, among other things, whether or not the proposed neutral arbitrator has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral with a party to the proceeding, or is participating in, or has participated within the last 2 years in, discussions regarding such prospective employment or service.

This bill, in a consumer arbitration case, would also require the disclosure of any solicitation made within the last 2 years by, or at the direction of, a private arbitration company to a party or lawyer for a

party. *The bill would only require disclosure of solicitations made after January 1, 2017.* The bill would prohibit the solicitation of a party or lawyer for a party during the pendency of the arbitration. The bill would also prohibit an arbitrator, from the time of appointment until the conclusion of the arbitration, from entertaining or accepting any offers of employment, employment or offers of new professional relationships, ~~or~~ *and, in a consumer arbitration case, would prohibit the arbitrator from entertaining or accepting any offers of employment as a dispute resolution neutral in another case from a party or lawyer for a party in the pending arbitration.*

Existing law requires a court to vacate an arbitration award if it determines that certain circumstances exist.

~~This bill~~ *this bill, in a consumer arbitration case, would authorize a party to recover arbitration proceeding costs from a private arbitration company or arbitrator if the arbitration award is vacated by the court based on a determination that there was corruption in any of the arbitrators, the rights of the party were substantially prejudiced by misconduct of a neutral arbitrator, or the arbitrator making the award either failed to timely disclose a ground for disqualification, as specified, or the arbitrator was subject to disqualification, as specified, but failed to disqualify himself or herself after receiving a timely demand to disqualify.* *disqualify because of a violation of specified ethics standards or disclosure requirements. The bill would only allow the recovery of costs after the private arbitration company or arbitrator is provided notice and an opportunity to be heard only on the issue of whether there was a violation of the ethics standards or disclosure requirements. The bill would prohibit the recovery of costs if the arbitration award is vacated solely on the basis of a harmless error.*

*This bill would exempt specified self-regulatory organizations from the application of the bill.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1281.65 is added to the Code of Civil
- 2 Procedure, to read:
- 3 1281.65. (a) From the time of appointment until the
- 4 conclusion of the arbitration, an arbitrator shall not entertain or
- 5 accept either of the following:

1 ~~(a) Any~~

2 (1) Any offers of employment or new professional relationships  
3 as a lawyer, expert witness, or consultant from a party or lawyer  
4 for a party in the pending arbitration.

5 ~~(b) Any~~

6 (2) In a consumer arbitration case, any offers of employment  
7 as a dispute resolution neutral in another case involving a party or  
8 lawyer for a party in the pending arbitration unless all parties to  
9 the pending arbitration, including the lawyers in the arbitration,  
10 have conferred and agreed in writing, before any solicitation of  
11 the arbitrator, to allow offers of future employment as a dispute  
12 resolution neutral to be made to the arbitrator.

13 (b) This section does not apply to an arbitration conducted or  
14 administered by a self-regulatory organization, as defined by the  
15 federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a) or  
16 regulations adopted under that act.

17 (c) For purposes of this section, “lawyer for a party” has the  
18 same definition as that term is defined in Section 1281.9.

19 SEC. 2. Section 1281.85 of the Code of Civil Procedure is  
20 amended to read:

21 1281.85. (a) Beginning July 1, 2002, a person serving as a  
22 neutral arbitrator pursuant to an arbitration agreement shall comply  
23 with the ethics standards for arbitrators adopted by the Judicial  
24 Council pursuant to this section. The Judicial Council shall adopt  
25 ~~ethical~~ ethics standards for all neutral arbitrators effective July 1,  
26 2002. These standards shall be consistent with the standards  
27 established for arbitrators in the judicial arbitration program and  
28 may ~~expand~~ expand, but shall not ~~limit~~ limit, the disclosure and  
29 disqualification requirements established by this chapter. The ethics  
30 standards shall address the disclosure of interests, relationships,  
31 or affiliations that may constitute conflicts of interest, including  
32 prior service as an arbitrator or other dispute resolution neutral  
33 entity, disqualifications, acceptance of gifts, and establishment of  
34 future professional relationships.

35 (b) Subdivision (a) does not apply to an arbitration conducted  
36 pursuant to the terms of a public or private sector collective  
37 bargaining agreement.

38 (c) The ethics requirements and standards of this chapter are  
39 nonnegotiable and shall not be waived.

(d) ~~If~~(1) *In a consumer arbitration case, if an arbitration award is vacated pursuant to paragraph (2), (3), or (6) of subdivision (a) of Section 1286.2 because of a violation of the ~~ethical~~ ethics standards adopted by the Judicial Council pursuant to this section or a violation of the disclosure requirements established by this chapter, a party may recover any costs incurred in the arbitration proceeding from the private arbitration company or from the arbitrator to whom the costs were paid. A recovery of costs from the private arbitration company or from the arbitrator is only allowed after the private arbitration company or the arbitrator is provided notice and an opportunity to be heard only on the issue of whether there was a violation of the ethics standards or disclosure requirements. A recovery of costs under this paragraph is prohibited if the arbitration award is vacated solely on the basis of a harmless error.* For purposes of this paragraph, “costs” include filing fees, administrative costs, arbitrator fees, or any other fees paid to the private arbitration company or arbitrator.

(2) *This subdivision does not apply to an arbitration conducted or administered by a self-regulatory organization, as defined by the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a) or regulations adopted under that act.*

SEC. 3. Section 1281.9 of the Code of Civil Procedure is amended to read:

1281.9. (a) In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial, including all of the following:

(1) The existence of any ground specified in Section 170.1 for disqualification of a judge. For purposes of paragraph (8) of subdivision (a) of Section 170.1, the proposed neutral arbitrator shall disclose whether or not he or she has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years, has participated in, discussions regarding such prospective employment or service with a party to the proceeding.

(2) Any matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council pursuant to this chapter.

(3) The names of the parties to all prior or pending noncollective bargaining cases in which the proposed neutral arbitrator served or is serving as a party arbitrator for a party to the arbitration proceeding or for a lawyer for a party and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys, and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(4) The names of the parties to all prior or pending noncollective bargaining cases involving a party to the arbitration or lawyer for a party for which the proposed neutral arbitrator served or is serving as neutral arbitrator, and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(5) Any attorney-client relationship the proposed neutral arbitrator has or had with a party or lawyer for a party to the arbitration proceeding.

(6) Any professional or significant personal relationship the proposed neutral arbitrator or his or her spouse or minor child living in the household has or has had with a party to the arbitration proceeding or lawyer for a party.

(7) (A) For a consumer arbitration case, any solicitation made within the last two years by, or at the direction of, the private arbitration company to a party or lawyer for a party to the consumer arbitration. During the pendency of the consumer arbitration, no solicitation shall be made of a party to the arbitration or of a lawyer for a party to the arbitration. ~~For Any solicitation made before January 1, 2017, is not required to be disclosed pursuant to this paragraph.~~

(B) *This paragraph does not apply to an arbitration conducted or administered by a self-regulatory organization, as defined by*

1 *the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a)*  
2 *or regulations adopted under that act.*

3 (C) (i) For purposes of this paragraph, “solicitation” includes  
4 ~~an oral or written request for arbitration business, but does not~~  
5 ~~include advertising directed to the general public or~~  
6 ~~communications indicating a general willingness to serve as an~~  
7 ~~arbitrator or private arbitration company. all of the following:~~

8 (I) *Private presentations made to a party or lawyer for a party*  
9 *by the private arbitration company or the arbitrator.*

10 (II) *An oral or written request for arbitration business.*

11 (III) *Oral or written discussions, meetings, or negotiations to*  
12 *designate the private arbitration company or the arbitrator as the*  
13 *arbitration provider or arbitrator for a party.*

14 (ii) For purposes of this paragraph, “solicitation” does not  
15 include any of the following:

16 (I) *Advertising directed to the general public.*

17 (II) *Communications indicating a general willingness to serve*  
18 *as an arbitrator or private arbitration company.*

19 (III) *Presentations made by the private arbitration company or*  
20 *the arbitrator at a program or seminar held open to the public.*

21 (b) Subject only to the disclosure requirements of law, the  
22 proposed neutral arbitrator shall disclose all matters required to  
23 be disclosed pursuant to this section to all parties in writing within  
24 10 calendar days of service of notice of the proposed nomination  
25 or appointment.

26 (c) For purposes of this section, “lawyer for a party” includes  
27 any lawyer or law firm currently associated in the practice of law  
28 with the lawyer hired to represent a party.

29 (d) For purposes of this section, “prior cases” means  
30 noncollective bargaining cases in which an arbitration award was  
31 rendered within five years before the date of the proposed  
32 nomination or appointment.

33 (e) For purposes of this section, “any arbitration” does not  
34 include an arbitration conducted pursuant to the terms of a public  
35 or private sector collective bargaining agreement.